Justice of the Peace
and
LOCAL GOVERNMENT REVIEW

ESTABLISHED 1837

[Registered at the General Post Office as a Newspaper]

LONDON:

SATURDAY, APRIL 12, 1958

Vol. CXXII No. 15 PAGES 227–242

Offices: LITTLE LONDON, CHICHESTER, SUSSEX

Chichester 3637 (Private Branch Exchange).

Showroom and Advertising:
11 & 12 Bell Yard, Temple Bar, W.C.2.
Holborn 6900.

Price 2*s.* 3*d.* (including Reports), 1*s.* 3*d.* (without Reports).

CONTENTS

REPORTS

NOTES OF THE WEEK

Desertion After Consensual Separation

The effect of an agreement between husband and wife to live apart is usually that it prevents either from proceeding against the other for desertion, since to constitute desertion there must be a separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse. The terms of any agreement to live apart must however be looked at before it is assumed that there was an intention that the separation should be permanent or indefinite.

The case of *Bosley* v. *Bosley* (*The Times*, March 19) presented a difficult problem for decision by the Court of Appeal, and Morris, L.J., without dissenting from the judgments of Hodson and Pearce, L.JJ., expressed his doubts.

Before the Commissioner each spouse petitioned for divorce alleging desertion by the other. The husband was granted a decree and the wife's petition was dismissed. She appealed.

The wife had left her husband in December, 1951, and the parties entered into an agreement by which the husband agreed to pay his wife a weekly sum. On December 30 she wrote to him offering to return but he refused the offer. The Commissioner found that the offer was genuine, but granted the husband a decree.

In delivering judgment, Hodson, L.J., referred to the fact that the wife, who had been married before, lost two pensions on her re-marriage and that the husband regarded it as a matter of honour that if they separated he should make that right, so a document was drawn up giving effect to this before the parting, although it bore a later date. That document was an agreement for maintenance and was not on its face an agreement to live apart for the parties' joint lives or for any other period. On the evidence the only answer was that from the date when he wrote refusing to have her back the husband was in desertion. The Lord Justice went on to deal with the question of the original parting having been consensual and to the cases that had been cited, and said that in his opinion the authorities dealing with deeds of separation for joint lives, had no application to the present case where there was at most an agreement to part for an indefinite period. The agreement did not contain any undertaking or promise to live apart and the wife was not in breach of it by offering to return. Her husband's refusal constituted desertion. The fact that the wife had asked him to take her back must have been in the mind of the husband when he handed over the agreement.

The Offer to Return

Pearce, L.J., said the Court should be slow to draw the conclusion that the agreement incorporated a term to separate for ever or excluded any unilateral change of mind or the right of one party to ask to return. The agreement did not purport to regulate the matrimonial position of the parties but only their financial position, and although it was a by-product of the decision to separate, it was equally apt to be a by-product of desertion.

Justices are often confronted with difficult questions about alleged desertion, the effect of an agreement and an offer to return. The case of *Bosley* v. *Bosley* is one more authority to be noted as a guide to the principles involved. Even where a wife had deserted her husband she was held to have terminated her desertion when she wrote suggesting a meeting and discussion of plans for living together again, and the husband had filed his petition, *Pratt* v. *Pratt* [1939] 3 All E.R. 437. The principle as stated in *Rayden On Divorce*, 7th edn., p. 178, is that desertion can be terminated by a supervening *animus revertendi*, coupled with a *bonâ fide* approach to the deserted spouse with a view to resumption of life together.

Punishment to Fit the Crime

In the case of *R.* v. *Grimwood* (*The Times*, March 20), the Court of Criminal Appeal reduced a sentence of eight years' preventive detention, passed at quarter sessions to one of two years' imprisonment, although the circumstances of the case, said Streatfeild, J., who delivered the judgment, nearly merited the sentence of eight years' but not quite.

The appellant had been convicted of stealing from a gas meter and asked for four other offences to be taken into consideration. He had a record of six previous convictions mainly for housebreaking, and in 1955 had been sentenced to three years' corrective training for housebreaking. From that sentence he was released in April, 1957, and had settled down. In passing sentence the learned recorder had said, no doubt having in mind a pronouncement of the Court of Criminal Appeal, that eight years was the minimum sentence of preventive detention.

Streatfeild, J., said that no doubt the recorder felt that the appellant was a petty pilferer from whom the public needed to be protected, but in the opinion of the Court, a sentence particularly of preventive detention, ought really to have relation to the gravity of the crime itself. The appellant had not lapsed into his old habits of housebreaking. On the principle that the punishment ought to fit the crime, the Court thought the sentence excessive.

Even in magistrates' courts, the problem of giving due weight to the two factors, one the nature of the offence itself and the other the defendant's previous record, is often perplexing. It is impossible to lay down any hard and fast rule, but evidently an offence trivial in itself ought not to meet with severity for the only reason of the previous convictions.

An Appeal Devoid of Merits

What the Lord Chief Justice described as an unfortunate case, due to a slip of the tongue, such as anyone might make, came before the Court of Criminal Appeal in *R.* v. *Lloyd* (*The Times*, March 20.)

Briefly, the facts were that the appellant had in 1956 pleaded guilty to three charges, garage-breaking and stealing, taking and driving away a motor car without consent, and driving while disqualified. He was sentenced to three months on the first charge, 12 months on the second and three years on the third.

In delivering the judgment of the Court of Criminal Appeal, the Lord Chief Justice said the appeal was devoid of merits. The Court thought the chairman had intended to pass a sentence of three years on the first charge and three months on the third, which did not carry a sentence of more than six months, but by a slip he transposed the two sentences. When the mistake was pointed out to the chairman he said he meant three years on the first count and not on the third. That would have been all right if the appellant had been there but he was not. Unfortunately the first count charged a felony and there was no power to alter a sentence when the prisoner was not present. His counsel was present and no injustice was done. The Court would put it right by substituting a sentence of six months on the third charge, and as the defendant had served his sentences he would be discharged.

This is an illustration of the artificial, and in the opinion of most people, outworn distinction between felony and misdemeanor. In the words of Lord Goddard, it was a technical point.

Litter

The Princess Royal uttered some plain language on the subject of litter when she opened a conference organized by the "Keep Britain Tidy" group on March 19, and she made some practical suggestions. Her Royal Highness confessed to having a whole swarm of bees in her bonnet on the subject of litter. As more and more people travel about this country, she said, so more and more do they tend to desecrate its loveliness by leaving behind them a trail of rubbish. She spoke of the shame and horror she had felt last year when at a Yorkshire agricultural show she saw bottles, cartons, cardboard plates and paper of every description spread like a plague over the whole area. Later during the proceedings the Princess Royal suggested that loud-speakers should be used at large gatherings, such as race meetings, to keep people up to the mark.

Mr. Chuter Ede brought home to the meeting the astonishing cost involved in the removal of litter. He instanced the case of a local authority which could have acquired an open space, but the annual cost of removing litter would have been greater than the cost of acquiring the land.

Finding the Remedy

In his address to the conference Mr. Henry Brooke, Minister of Housing and Local Government, acknowledged the value of some suggestions that had been sent to him, especially by women, and invited more. He, too, referred to the cost of removal of litter and said that £11 million a year was spent in keeping streets clean. These costs could be greatly reduced if people became more litter conscious. In the country, litter could not be constantly picked up by armies of officials.

As we have often said, the remedy lies in home training supplemented by the influence of the schools. Mr. Brooke, referring to this, said that women were in the strongest position to influence children. He pointed out, also, that under local byelaws and under a Bill before Parliament, anyone could initiate proceedings. The police could not be everywhere, and it was open to any bystander to have a person brought before the court if he would not clear up his litter.

It was interesting and surprising to learn that from inquiries of various countries abroad it appeared that there was no great difference in the laws about litter, but differences in standards of behaviour. Switzerland ranked very high in this matter.

All this shows that although the law can do something about this evil its effectiveness is limited, and the root of the matter is the state of public opinion dictating standards of behaviour. The police do what they can, and members of the public may sometimes be able to help; particularly in towns where it is generally possible to report quickly to a policeman. It would be rather difficult for a "private individual" to use a police expression, to tackle a picnic party in the country and obtain names and addresses, and even a public spirited person might hesitate to involve himself in a prosecution that might entail travelling some distance to give evidence, and to take full responsibility for it.

Removing Disqualifications

Section 7 (3) of the Road Traffic Act, 1930, authorizes a person who is disqualified by virtue of a conviction or order of a court for holding a driving licence to apply to that court on a subsequent date to remove the disqualification. The time within which such an application may be made varies, by an amendment of the law made by s. 27 of the Road Traffic Act, 1956, according to the length of the period of disqualification. The power of the court which hears such an application is "having regard to the character of the person disqualified and his conduct subsequent to the conviction or order, the nature of the offence and any other circumstances of the case," either to remove the disqualification as from such date as they may specify or to refuse the application.

It is generally considered, we believe, that courts require more evidence to satisfy them that it is proper to remove a disqualification when it is one which

was deliberately fixed, in the court's discretion, by an order of the court than when it is one which had to be imposed on conviction, in the absence of special reasons. Many disqualifications which were so imposed for what were sometimes termed "technical" offences of using a car without proper insurance, were subsequently removed before the expiration of the full 12 months.

The removal of part of a 12 months' disqualification imposed for dangerous driving is more unusual. The court which convicted the offender must have come deliberately to the conclusion that his offence was one which merited that period of disqualification, but s. 7 (3) clearly authorizes an application by an offender who has been disqualified in this way. The *Newcastle Journal* of March 11, 1958, reports one such application. The applicant was aged 22 and he is reported as saying "I hope to be married in May and I want to take my bride on a motor-cycling honeymoon." He said also that he wanted to get a better job driving a tractor. We are left guessing which of these grounds had more influence on the minds of the bench, but the application was granted and the chairman said, "I hope you drive especially carefully on your honeymoon."

This is a discretion which it is not easy for courts to exercise, and there is room for quite wide divergence in practice. There are no decisions to guide magistrates in the exercise of their discretion as there are to help them in deciding what is meant by "special reasons" for not disqualifying when the statute requires disqualification on conviction.

"Don't Hang Yourself" Advice to Drivers

The *Evening Argus*, Brighton, of recent date, gives a report of a talk given at a meeting on "The lighter side of the law." The speaker is said to have advised motorists "don't make a statement to the police when they pinch you for parking." He added, "There are many cases of drivers convicting themselves out of their own mouths," and advised drivers that when the policeman opens his note book to report a driver for an alleged offence all that the driver has to do is to give his name, address, occupation and age and he is not obliged to make any statement about the alleged offence. Later the speaker referred to the driver who is taken to the police station suspected of being under the influence of drink, and here his advice is reported to have been, "Ask for your own doctor to see you. Calling your own doctor causes a delay. It's amazing how people can recover in 20 minutes of waiting." This is perfectly legitimate advice, although it may not assist the administration of justice in the sense of ensuring that a driver who *when stopped* was under the influence of drink to such an extent as not to have proper control of his vehicle is proved so to have been when the case is tried. The police are often handicapped in such cases by the lapse of time between an arrest and a medical examination which makes it impossible for a doctor to give a certain opinion as to the driver's condition at the time he was stopped. There is here a conflict between the interests of the person charged who (unless he is an extremely honest and honourable person) wishes to escape the consequences of his indiscretion and the interests of the public at large which require that persons who drive, or are in charge of, motor vehicles when they have had too much to drink should not escape conviction. All too often, we fear, the driver wins, but this is inevitable when the onus is, as it must be, on the prosecution to prove its case beyond reasonable doubt.

Too Much Horse-power for Young Motor-cyclists

The fact that a learner on a solo motor-bicycle does not need to be accompanied by a qualified driver means that a boy of 16, with no previous experience, can ride the most powerful motor-bicycle which can be bought on the first day that he ventures out on our crowded roads. It is reported in *The Yorkshire Post* of March 12, 1958, that a coroner, commenting on this fact, remarked, "In point of fact he is empowered to acquire a lethal weapon at the age of 16." The inquest at which this comment was made was occasioned by the death of a boy of 16 who was killed when his motor-cycle was in collision with a car. The dead boy's father told the coroner that his son got a 500 c.c. machine on his birthday in January. Another motor-cyclist, a lad of 16, said that a few days before he was killed the deceased boy had stopped by him on his motor-cycle and had said that his speedometer had registered 85 to 90 miles per hour. Shortly before the fatal accident the two boys had been riding side by side at about 65 miles per hour. According to his father the dead boy's previous experience was confined to riding motor-cycles in a field for about two years. This may have given him an opportunity to learn to control them at reasonable speeds but it would not, we imagine, have given him any chance to realize the dangers of such high speeds as those at which he apparently rode so soon after he became old enough to ride on the roads. It is surely the responsibility of parents to try to control the natural enthusiasm of their sons and to emphasize the dangers which they run when they start hurtling along the highway at these very high speeds. It has been suggested that there should be a limit to the power of the machines which young motor-cyclists may ride. This would not be a very great extension of the present law which fixes different ages for the driving of different vehicles. At least when a young man drives his first car he has to be accompanied by a qualified driver who can exercise control over his driving; the young motor-cyclist is free from all control, and a regulation of the power of the machine he is authorized to learn on does not seem unreasonable.

Reading the Statement of Facts Under the Magistrates' Courts Act, 1957

We have been asked in a Practical Point whether the statement of facts which has to be read in court when a defendant pleads guilty by post can be read by someone other than the informant or his advocate. The Act clearly allows the court to proceed in the absence of the prosecutor as well as that of the defendant (s. 1 (2) (*a*).) Also, before accepting the postal plea of guilty the court must cause the notification of the defendant's desire to plead guilty, his statement in mitigation and the prosecutor's statement of facts to be read out before the court.

It has yet to be decided whether the Act of 1957 gives any right to plead to any person who cannot appear and plead if the procedure is not under that Act. A limited company, for example, cannot appeal or plead in court except by its advocate. Can an official of the company write pleading guilty under the Act of 1957 when he cannot appear and plead? We incline to the view that he cannot so write. Equally we think that it is clear that if the informant or his advocate appears he has the right to read the statement of facts, and we think that there is much to be said for his doing so because there is no fear then that it may appear that the court is in any way concerned with the presentation of the prosecution's case. But if, to use the words of s. 1 (2) (*a*) "the

prosecutor is also absent" we think that there is no one else who has the *right* to claim that he is entitled to read the statement of facts on behalf of the prosecutor. The position then is, as we see it, that it is the duty of the court to cause the statement of facts to be read and it is in the discretion of the court to direct who shall do so. The court has clear authority over its own officials and can direct any one of them to read the statement; in many cases it is likely to be the clerk upon whom this duty will fall, although as we have suggested above this does rather give the appearance of the court's being identified with the presentation of the prosecution's case. But what authority has the court to direct that some other person, over whom it has no control and who is not a party to the case, shall read the statement of facts? We have found no answer to this question and we shall be pleased to learn whether any of our readers can suggest one. If, however, in a police prosecution there is some other police officer present in court who is willing to read the statement of facts and the court is content to "cause" him to do so we cannot find that there is any valid objection to this being done. In cases other than police cases (railway frauds for example) there may also be some official present who is prepared so to act. This may seem to be an encroachment on the prerogative of the legal profession, but the procedure of pleading by post must obviously have a similar effect by allowing defendants to plead without either appearing or being represented, and it may well be that the other consequence flows naturally from this.

New Tenancy Conditions

Display headlines in a Sunday newspaper call attention to requirements imposed on certain London tenants, by new leases offered for their flats in anticipation of decontrol in October next. The point of giving valuable space to the affairs of a single block of flats is that the owners are the Co-Operative Insurance Society, which is an offshoot of the co-operative movement, and that this is in general alliance with the Labour Party. The tenants are said to be complaining of an increase of rent by some 30 *per cent.* under the new leases, and still more strongly about other conditions which they are being required to accept. Their complaints (as made public by a newspaper hostile to the Labour Party) throw an interesting sidelight upon the mentality which has grown up under the shadow of the Rent Restrictions Acts. They are reported as believing that they are put into the position of serfs of a feudal landlord; it is interesting, therefore, to see just what are the conditions of tenancy of which complaint is made. They are required to paint and paper their flats, and at the end of the tenancy to leave them in proper decorative repair. They must insure against fire, either with the Insurance Society which owns the property or with some company acceptable to the Society. Electrical work within the flat may not be done, except by a firm whom the Society approves.

To take these three conditions first. The condition about decorative repair is normal; we should think most properly drawn leases of flats for many years have imposed it. The condition about insurance was dealt with lately in a Practical Point, where we indicated that it had received strong judicial support. The condition about electrical work is highly desirable. A tenant, interviewed by the newspaper, knows an electrician who would do odd jobs—there are, however, few things more dangerous in the home than electrical equipment carried out by amateurs, and such a condition is a protection for human life as well as for the property.

Then again, there is a condition that wireless sets are not to be used between 11 *p.m.* and 8 *a.m.* This is a little drastic, because many people will switch on at 7 o'clock, or at 7.50 for the morning prayers called "Lift up Your Hearts," and neighbours are not likely to object. This, however, is a detail and such a condition is probably embodied in every modern lease of flats. Lastly, there is a prohibition of animals and birds. We have ourselves from time to time suggested that local authorities were going too far, in stopping their tenants from keeping ordinary domestic animals, and we have suggested that in some places it was wrong to prohibit pigs and poultry. So long, however, as local authorities impose these drastic restrictions, it can hardly be wrong for the landlord of a privately owned block of flats to do the same.

An official of the Society involved, when questioned by the newspaper, agreed that the Society had a socialist background, but quite fairly pointed out that it had received money from its policy holders, to whom it owed a duty in managing the flats. The new rental, 30 *per cent.* above the old, is in line with what the best London landlords are asking from old tenants, and is moderate. The incident is only mentioned here, because it shows that the merits are really the same whoever be the landlord, and also shows (we fear) that all too many tenants have lost touch with realities of life, when it comes to their relation with their landlords.

Private Street Costs

Writing in *The Times* of March 12, a Mr. F. M. Renaut of Carlisle makes a suggestion which must have come into the mind of everyone concerned with local government at one time or another. The suggestion is being put to the Minister of Housing and Local Government in the House of Commons; it is that the cost of private street works should be transferred from frontagers to local authorities. The member for Carlisle and the writer of the letter evidently think that s. 150 of the Public Health Act, 1875, is the root of the mischief of which they complain. In reality that section did not impose the burden upon frontagers for the first time; it was based upon s. 53 of the Towns Improvement Clauses Act, 1847, while the Private Street Works Act, 1892, applies today more widely. This however is no more than a debating point, only worth making by way of answer to Mr. Renaut's contention that the mischief complained of is 82 years old: he might have said 111, and between 1875 and 1892 there is not much in it. It has been in the present century that the country has seen the greatest social changes to occur in any equivalent period. The result has been, as Mr. Renaut says, that the making of new streets is a costly engineering job. This was indeed admitted by responsible people after the first world war, when a standard specification of street works was drawn up; *Lumley* has an informative note about this. It must be true, as also stated in his letter, that the charge upon the frontager of £150 or £250, however small the house, will be a deterrent to house purchasers. The New Streets Act, 1951, is designed to safeguard the public, including frontagers, against an evil which was common at one time; that is, the laying out of a street and the selling of building plots or buildings by a speculator, who then left the purchasers to bear a burden which, unless they were properly advised, they might not have foreseen. That Act, however, does not meet the point against which Mr. Renaut's letter is directed, because the burden of money paid to the local authority in accordance with that Act will ultimately fall upon the purchaser. As Mr. Renaut says, there is no parallel in public or

private life where certain people pay the whole cost of providing a public amenity, which every person then has a right to enjoy.

It is easy to say this, but much harder than the writer seems to realize to discover a remedy. The efforts made 34 years ago to standardize the specification for private streets, and the provisions in the Act of 1892 itself for mitigating the burden on the frontager, are merely palliatives. Tempting as it is from the point of view of the frontager immediately affected to say that the street is a public amenity which ought to be paid for by the public, this overlooks the fact that for generations past other frontagers have paid for private street works. The essential obstacle to throwing upon the ratepayers the cost of new streets now being made up is that this would make the frontagers in existing streets pay twice. We do not see any way out of this dilemma. There is another point. Every purchaser knows if properly advised that this charge will fall upon him. Since the Act of 1951 was passed, he is less exposed than he used to be to finding himself saddled with a higher charge for private street works than could have been foreseen. What goes into the pocket of the developing owner is an amount diminished directly or indirectly by the cost of the private street works, but the purchaser is still prepared to pay out a total which includes that cost. Ricardo may be out of fashion, but it still seems true that if the purchaser of a house or building plot was relieved from the cost of street works, through its being transferred to the ratepayers at large, an equivalent amount would go into the pocket of the developing owner.

LICENSING OF THEATRES

An important decision on the question of the licensing of theatres for the sale of intoxicating liquors and tobacco is that of the Court of Appeal in *R.* v. *County Licensing (Stage Plays) Committee of the County Council of Flint* [1957] 1 All E.R. 112. (For the sake of brevity, we shall refer to the case as "the *Flint* case."

The point in issue was whether the justices were, in the circumstances, entitled to refuse a theatre the renewal of a licence for the sale of intoxicating liquors and tobacco, the real question being whether in arriving at their decision the justices had taken into account matters, which should not have been taken into account, such as the fact that the district where the theatre was situated, was well supplied with drinking facilities or the fact that the justices had refused another theatre nearby, such a licence.

The Material Facts

The facts in the case were briefly as follows. The theatre in question had held an unrestricted theatrical licence since 1901, under which accordingly it was licensed in addition for the sale of intoxicating liquors and tobacco. There had never been any complaint as to the conduct or management of the theatre.

In February, 1956, two applications came before the licensing committee for licences, one for this theatre and one for another theatre in the district. The latter had always had a restricted licence, and had not been allowed to sell intoxicating liquors or tobacco. The application of this theatre, which apparently came on first, for the sale of intoxicating liquors was again refused.

When the application was next made in respect of the theatre in question for a renewal of its unrestricted licence, the Committee determined to refuse it an unrestricted licence, notwithstanding that it had enjoyed such a licence for something over 50 years. The ground for this refusal to renew the licence for the sale of intoxicating liquors and tobacco, was because the neighbourhood was well supplied with facilities for drinking and because also the other theatre had been refused the licence.

Two Different Types of Licences

Now when a theatre applies for licences, there are two different types of licences which have to be considered. There is firstly the theatrical licence which is granted under the Theatres Act of 1843, and secondly, the licence under the Licensing Act of 1953.

The Theatrical Licence

Section 9 of the Theatres Act, 1843, governs the granting of what may be called the theatrical licence.

Under this section the justices at a special licensing session are required to make suitable rules for ensuring *order* and *decency* at the several theatres licensed by them.

Under r. 3 of the Committee's Theatrical Rules, it was provided that "no spirituous liquors, wines, ale, beer, porter, cider, perry or tobacco shall be sold or disposed of in the theatre."

As far as the grant of a theatrical licence was concerned it will be observed that under s. 9 of the Act of 1843, the only matter with which the justices are concerned is to secure *order and decency*. It was urged accordingly that the only matter which the justices were entitled to have in mind in granting or restricting the licences were questions of order and decency, as to which in this particular case no complaint could be made. Moreover no such ground of opposition was even put forward.

Discretion to Grant Licences Under 1953 Act Wider

While the power of granting a theatrical licence involved consideration merely of order and decency, the grant of a licence for the sale of intoxicating liquors under the Licensing Act, 1953, involves other considerations.

Under s. 4 of the Licensing Act of 1953, licensing justices may grant a justices' licence to any person not disqualified for holding such a licence, "*as they think fit and proper.*"

The discretion conferred by the Licensing Act, 1953, accordingly was as wide as it could possibly be, though, on the other hand it was a judicial discretion and accordingly was not to be exercised capriciously.

Earlier Authorities

There is authority for the view that the justices have virtually an absolute discretion as to whether to grant a theatre an additional licence for the sale of intoxicating liquors, and that this discretion will not be disturbed unless the justices have taken into account matters which were clearly irrelevant.

The fact that there are facilities for obtaining intoxicating liquors near the theatre was apparently held to be a proper factor to take into account in *R.* v. *C.C. of West Riding of Yorkshire* [1896] 2 Q.B. 387; 60 J.P. 550, where there was a public house situate within 20 *yds.* of the door of the theatre,

and where the justices apparently for this reason refused the theatre a licence to sell intoxicating liquors in the theatre.

Judgments in the W. Riding Case

Thus in that case, Cave, J., said that some discretion was vested in the justices, and unless it was shown that they clearly had not exercised their discretion properly by allowing irrelevant considerations to influence them, the Court could not interfere. At the same time, however, objection might have been raised if the justices had passed a general rule that in no circumstances was a theatre to be licensed, unless the licensee undertook not to sell intoxicating liquor. As the learned Judge added, "The propriety of allowing the sale of liquor, in a theatre, may vary much according to the locality in which the theatre is situate, or the character of the theatre itself. It is a matter which might very properly be taken into consideration that there was a place where liquor could be obtained within a few yards."

And Mr. Justice Wills added, "One of the grounds upon which it is well recognized that justices may fairly refuse a licence to a public house is that there are already too many public houses in the immediate neighbourhood. There is already a public house within 20 *yds.* of this theatre. If then an unconditional licence were granted . . . the effect would be to multiply facilities for drinking, and it is a neighbourhood in which it is not desirable to do so. If that is not a good ground for the exercise of their discretion by the Committee in the way they have done, I cannot conceive what is."

Criticism of the W. Riding Decision.

One criticism, however, that may be levelled against this decision is that the attention of the court was not called to s. 9 of the Theatres Act, 1843, and to the fact that under that section, order and decency, and not excessive facilities for drinking, were the material factors for consideration.

The Decision in the Flint Case

That the West Riding of Yorkshire decision cannot be regarded as carrying any longer the weight of authority it had on the point that the justices in considering the grant of a theatre licence were entitled to take into consideration the fact of other drinking facilities in the district, appears to result from the decision of the Court of Appeal in the *Flint* case for the Court directed a *mandamus* to the justices.

Two points of substance emerge from this latest decision of the Court of Appeal.

First, each application for a theatrical licence must be considered separately, so that the fact that the justices may have granted or refused an unrestricted licence to another theatre is to be disregarded. Each case had to be considered on its own merits.

Secondly, while the justices were entitled to take into consideration the existence of other drinking facilities in the area, such a factor was not overwhelming so as to exclude a theatre automatically from an unrestricted licence. Applying these principles to the facts of the present case, the Court, while it wished to say nothing to take away authority from the Committee, pointed out at the same time that after the long period during which the theatre had held an unrestricted licence without any complaints, it was not right to make the change in the licence, refusing the theatre the right to sell intoxicating liquors or tobacco, the result of which would be a reduction in the profits of the theatre and great difficulties for the management. T.J.S.

AUTHORITY TO PROSECUTE

The question as to who may commence a criminal prosecution against an offender often causes difficulty in practice; in particular where a local authority are concerned. In this article it is not proposed to attempt any very original observations on the subject—indeed the writer is greatly indebted to a number of learned writers[1]—but it was thought that a review of the position under those statutes that are most used in local government practice might be of value.

GENERAL PRINCIPLES

At common law, where statute has not intervened, any member of the public (including in this expression a police officer or an officer of the local authority) may set criminal proceedings in motion by laying an information in the proper manner, subject of course to the penalties for the tort of malicious prosecution. A number of statutes expressly authorize local authorities to take proceedings, and the better opinion seems to be that, except possibly for the ancient chartered boroughs[2], unless some express statutory provision applies a local authority cannot commence criminal proceedings, as by so doing the authority are expending rate fund moneys without authority, by employing staff on the prosecution and placing the rates in jeopardy in the event of the proceedings being unsuccessful. Nevertheless, the local authority may be able, indirectly, to arrange for proceedings to be commenced, for one of their officers may lay the information in his own name[3] as an ordinary member of the public.

It is now proposed to consider some of the more important local government statutes under which proceedings may be brought.

FOOD AND DRUGS ACT, 1955

Section 109 of this Act gives powers to institute proceedings under the Act[4] to local authorities and it is made the duty of most authorities to enforce the Act by s. 87, *ibid.* These powers and duties are not exclusive, however, and the police—or any member of the public—may, but rarely do in practice, take proceedings. Byelaws made under the Act (*e.g.*, in respect of the sale of food in the open air, etc., under s. 15) may be enforced in the same manner (and *see* below).

PUBLIC HEALTH ACTS

Section 253 of the Public Health Act, 1875, restricts the right to prosecute for offences for the recovery of a penalty under the Act, to a "party aggrieved", or to the local authority of the district in which the offence is committed; if any one else (including a police officer) intends to take proceedings, the consent of the Attorney-General has to be obtained. "Party aggrieved" has been the subject of a great deal of litigation, which it is not proposed to discuss here. It is not however

[1] *See, e.g.*, Dr. Glanville Williams in [1955] Crim. L.R. 596 and 688, "Byelaws of Local Authorities," by A. Norman Scholefield, at p. 112, *et seq.*, and article at 111 J.P.N. 545.

[2] This follows, it is submitted, from the theory that these boroughs can at common law do anything that a private individual may do, accepted in *Att.-Gen.* v. *Leicester Corporation* [1943] 1 All E.R. 146; 107 J.P. 65.

[3] As happened in *Snodgrass* v. *Topping* (1952) 116 J.P. 332. This case also showed that an individual may take proceedings under a statute where enforcement is the duty of the local authority.

[4] Including regulations made thereunder, or under earlier legislation, such as the Milk and Dairies Regulations, 1949 (*see* s. 136 and sch. 12, para. 1, of the 1955 Act.)

always appreciated that s. 253 applies also to a number of offences not contained in the 1875 Act itself and to byelaws made under the Act, (such as " parks " byelaws under s. 164). Offences under the Towns Improvement Clauses Act, 1847, are incorporated by s. 160 of the 1875 Act (as amended by s. 346 (1) of the 1936 Act), and so are offences under the Town Police Clauses Act, 1847, by s. 171 of the 1875 Act, including offences against the local authority's hackney carriage byelaws (under s. 68 of the 1847 Act). In a case of a prosecution under s. 28 of the 1847 Act, incorporated by s. 171 of the 1875 Act, it seems that a constable within whose " view " an offence has been committed under the section may take proceedings, but in any other case the police would require the Attorney-General's consent: *Sheffield Corporation* v. *Kitson* [1929] 2 K.B. 322; 93 J.P. 135, criticising *Jobson* v. *Henderson* (1900) 64 J.P. 425. Offences under the Public Health Acts Amendment Act, 1890, the Public Health Acts Amendment Act, 1907, and the Public Health Act, 1925 (so far as it is not repealed) including in the latter case offences under parking place byelaws (1925 Act, s. 68, as amended by s. 16 of the Restriction of Ribbon Development Act, 1935) will all be subject to s. 253, as all these Acts are required to be " construed as one " with the 1875 Act (1890 Act, s. 2 (1); 1907 Act, s. 2 (1); 1925 Act, s. 1 (3).)

In the case of the Public Health Act, 1936, s. 298 thereof imposes a similar restriction on proceedings brought under the Act (whether or not to " recover a penalty ") providing that, except where a law officer's consent is obtained, only a party aggrieved or the local authority whose function it is to enforce the provisions or byelaws in question, or by whom the byelaws were made, may take proceedings. An express power to take proceedings in respect of a statutory nuisance is given to " a *person* aggrieved," by s. 99 of the Act, and this power may be invoked even against the local authority themselves: *R.* v. *Epping Justices, ex parte Burlinson* [1947] 2 All E.R. 537; (1948) 112 J.P. 3.

Section 298 will apply also to offences against those provisions of sch. 3 to the Water Act, 1945, which are incorporated with the 1936 Act, where the local authority are supplying water under the Public Health Act: *see* s. 120 of the 1936 Act, as amended by sch. 4 to the Water Act, 1945.

OTHER STATUTES

Generally speaking, a local authority *may* prosecute for offences where " they deem it expedient for the promotion or protection of the interests of the inhabitants of their area," by virtue of s. 276 of the Local Government Act, 1933, and this power may be used no doubt by an authority to enforce the provisions of a statute in respect of which they are the administering authority (such as, *e.g.*, the Housing Act, 1957, or the Factories Act, 1937, in respect of those sections which are to be enforced by the district council: *see* s. 8 (1) thereof), but it is not clear how far this section can be taken.[5] In other cases the local authority may be expressly empowered to prosecute, such as in s. 4 of the Heating Appliances (Fire-Guards) Act, 1952, and the Clean Air Act, 1956, which contains a section (s. 29) similar in effect to s. 298 of the Public Health Act, 1936.

BYELAWS

The position in relation to prosecutions instituted for offences committed under byelaws will normally be governed by the terms of the enabling statute. Byelaws under the Public Health Acts will be subject to the restrictions above mentioned, and as it is made the duty of certain local authorities to enforce the provisions of the Food and Drugs Act, 1955, it is submitted that they will be enabled to take proceedings, in common with the police or other persons, for offences against byelaws made under that statute. So far as byelaws for " good rule and government " are concerned, which are made under s. 249 of the Local Government Act, 1933, there seem to be no restrictions as to who may prosecute, and indeed the police in practice take proceedings under these byelaws every day (this is the charge often laid in cases of urinating in the street—" nuisances contrary to public decency "). The local authority may presumably take proceedings for offences against their own byelaws, and a rural or urban district council are expressly authorized to take proceedings in respect of breaches of the county council's good rule and government byelaws (*see* s. 249 (5)); a provision which itself suggests that Parliament considered that a local authority had no powers to take proceedings unless they had been expressly so authorized by statute—and except in cases of the enforcement of their own byelaws.

In passing, it should be noted that in the case of any statute passed after 1933, conferring byelaw-making powers on a local authority, and apart from any express provision in the enabling statute, the power to impose a penalty for a breach of a byelaw, the byelaw-making procedure, and the means of proof in court of a byelaw[6], is all contained in ss. 250-252 of the Local Government Act, 1933.

OFFICERS OF THE AUTHORITY

Even if the local authority are entitled to take proceedings, the actual physical process of laying the information will have to be carried out by some animate person on their behalf, and it will have to be shown that that person has been (either generally or specially) authorized or instructed on their behalf, under s. 277 of the Local Government Act, 1933. This section empowers the authority to authorize one of their members or officers (*not* a police officer employed by another authority: *Oberst* v. *Coombs* (1955) 119 J.P.N. 179) to institute proceedings and to appear in court on their behalf in a magistrates' court. In addition, they may of course instruct a solicitor and counsel to appear in any court where they have rights of audience, and it is sometimes argued that a town clerk of a chartered borough (whether or not he is a solicitor or of counsel) has at common law a right of audience in any court in which his corporation is engaged as a party. If the person who lays the information, in circumstances where the right to take proceedings is restricted to the local authority as above mentioned, cannot prove that he is so acting with the authority of his counsel, the proceedings will fail: *Bob Keats Ltd.* v. *Farrant* [1951] 1 All E. R. 899; 115 J.P. 304. On the other hand, in cases where anyone can take proceedings, any officer of a local authority can lay the information, and he need not prove any special or general authorization (*Snodgrass* v. *Topping* (1952) 116 J.P. 332); indeed if he alleges he has such an authorization, and it is established that the local authority had no power to bring the proceedings[7], the words of authorization in the information will be ignored and the proceedings will continue on the basis of their having been commenced by the officer personally: *Lake* v. *Smith* (1911) 76 J.P. 71. In such circumstances, however, the court would not be able to award costs against the local authority.

J.F.G.

[5] *See* article by the present writer commenting on the Agriculture (Safety, Health and Welfare Provisions) Act, 1956, and other recent statutes, at [1957] Crim. L.R. 226.

[6] The courts do not take judicial notice of byelaws; they should be properly proved.

[7] In the days before the abolition of common informers, it was held that a local authority could not prosecute for a penalty as a common informer.

NOW TURN TO PAGE 1

There is no power to issue a warrant for the arrest of a defendant who fails to appear in answer to a summons in any matter of bastardy, other than for the enforcement of arrears. (Magistrates' Courts Act, 1952, s. 47 (8) and s. 74 (3.)

SECTION 133 OF THE LANDS CLAUSES CONSOLIDATION ACT, 1845

By D. E. HOWELL JAMES, M.A., LL.B., D.P.A., *Senior Assistant Solicitor to the Norfolk County Council*

The exact scope of this section has aroused interest in recent years, since it is understood that some district auditors have suggested to rating authorities that they were at fault in not claiming payments when the section applied.

Unfortunately it is not easy to be certain when the section does apply. It was passed originally with the purpose of being incorporated into Acts giving railway companies and similar bodies power to acquire land. It has been extended to cover many other cases of the acquisition of land, but it has been extended with variations to cover altered circumstances. These variations themselves differ in different cases, and it is therefore proposed to deal in the first place with a moderately straightforward case, and then to consider the commoner variations.

I. A TYPICAL CASE

A county council purchase by agreement a house in a rural district for conversion into an old people's home. During the period of negotiation and adaptation the house stands empty. Can the rural district council claim anything under the section?

1. *Application of the Act.*

The Act is of effect only to the extent that it is incorporated in another statute, but s. 1 provides that in all future cases in which a statute gives power to acquire land the Act shall be incorporated with the later statute. If the later statute is silent, therefore, the Act of 1845 will apply as a whole. It is usual, however, for modern statutes giving power to acquire land expressly to incorporate the whole or part of the Act of 1845, and in such a case s. 1 will have no effect, and the extent of incorporation will depend on the modern statute.

Local authorities have power under s. 157 of the Local Government Act, 1933, to acquire land by agreement for the purposes of any of their functions under any public general Act, and when this power is exercised, s. 176 of that Act incorporates the Lands Clauses Acts with certain exceptions not affecting this point. Section 133 therefore applies.

2. *The section (as amended).*

" And be it enacted that if the promoters of the undertaking become possessed by virtue of this or the special Act or any Act incorporated therewith of any lands liable to be assessed to the poor's rate they shall from time to time until the works shall be completed and assessed to such poor's rate be liable to make good the deficiency in the several assessments for poor's rate by reason of such lands having been taken or used for the purposes of the works; and such deficiency shall be computed according to the rental at which such lands with any building thereon were valued or rated at the time of the passing of the special Act; and on demand of such deficiency the promoters of the undertaking or their treasurer shall pay all such deficiences to the collectors of the said assessments respectively."

3. *Definitions.*

In the circumstances of this case certain words are defined in a special way, either by the interpretation section of the Act of 1845 or by later statutes.

(*a*) *Promoters of the undertaking.*

This means the local authority: Local Government Act, 1933, s. 176.

(*b*) *The special Act.*

This means the Local Government Act, 1933, s. 176.

(*c*) *Lands.*

Includes any interest in land and any easement or right in to or over land: Local Government Act, 1933, s. 305, applied by s. 176.

(*d*) *Poor's rate.*

This now means the general rate: Rating and Valuation Act, 1925, s. 2 (7).

(*e*) *The works.*

This means the works which shall by the special Act be authorized to be executed: Act of 1845, s. 2.

Since the special Act is the Local Government Act, 1933, it is necessary to consider exactly what is authorized by that Act, and what by the statute dealing with the particular service, in this case the National Assistance Act, 1948. The county council will do three things with the building: they will acquire it, adapt it, and use it. Only the first of these, the acquisition, is authorized by the special Act, the Local Government Act, 1933. Only therefore if the actual acquisition can be said to constitute " works " can the section apply.

It is sometimes argued that no physical works are involved in the expression " works," and the case of *Central Control Board* v. *Cannon Brewery* (1919) 83 J.P. 261, is cited in support of this. It seems, however, that this is going beyond the judgment in the case, which merely decided that an " undertaking " (in that case the control of licensed houses) could be carried on without any physical works.

The better view seems to be that although an " undertaking " need not involve physical works, " works " must do so. If this is not so the phrase " until the works be completed " is difficult of interpretation.

In this case it seems, therefore, that the works involved are not authorized by the special Act, the Local Government Act, 1933, but by another Act, the National Assistance Act, 1948, which is not incorporated with it. The works are therefore not works as defined by the Act of 1845.

(*f*) *The deficiency in the assessment.*

This phrase gives rise to some difficulty, because the meaning of the word " assessment " has changed. At present the assessment of a building is its rateable value, and if the word in the Act is to have this meaning there will in most cases be no deficiency. The loss of rate income arises as a rule from the fact that the property is unoccupied, not that the rateable value has altered.

In earlier times, however, " assessment " meant the actual payment demanded in respect of the property, and it is by no means clear what Parliament meant by the term in 1845. Even as late as the sixties of last century the term was being used in both senses, the Union Assessment Committee Act, 1862, employing the modern sense, since it deals with " uniform and correct valuations," while the Poor Rate Assessment and Collection Act, 1869, reverts to the older sense, since it allows a lessee for a short term to deduct from his rent " the amount paid by him in respect of any poor rate assessed upon such hereditament."

The Act of 1845 speaks of making good the deficiency in the assessment, and not of making good the loss of rates arising from the deficiency, and this seems to support the view that the phrase has its older meaning, but later Acts have treated it as if this were not so.

It is not strictly permissible, in general, when construing a statute to look at a later statute, but it is noteworthy that the Rating and Valuation Act, 1925, in s. 2 (7) refers to the insertion in the valuation list of the assessments on which any payment is made by the promoters. This makes it clear that at that date, at least, the assessment was taken as meaning the rateable value.

In 1891 the point was touched on but not directly argued in the case of *Putney Overseers* v. *L.S.W.R.* (1891) 55 J.P. 422. In that case the promoters attempted to escape liability on the ground that some of the property was unoccupied and therefore unrated, at the time of the passing of the special Act. Lord Esher, M.R., said, " suppose the assessment was £3,000 at the passing of the Act, and subsequently in any year it amounted only to £2,000, yet the rate is to be taken as against the company on the former sum." The phrase " the rate is to be taken on the former sum " certainly suggests that " assessment " is here being used in its modern sense. Bowen, L.J., said, in so many words, " It is not a question of what was paid but of what was assessed."

On the whole, it is suggested that the better view is that " assessment " is used in its modern sense, and that only deficiencies in the rateable value, and not mere loss of rates through voids, are covered by the section.

(*g*) *The time of the passing of the special Act.*

The Local Government Act, 1933, received Royal Assent on November 17, 1933.

4. *The effect of the section.*

The effect of the section as amended and applied can be set out as follows:—

If a local authority become possessed by virtue of the Act of 1845 or the Local Government Act, 1933, or any Act incorporated therewith of any land (including any interest in land and any easement or right in to or over land) liable to be assessed to the general rate they shall until the works authorized by the Local Government Act, 1933, be completed and assessed to such rate be liable to make good the deficiency in the rateable value, by reason of such lands having been taken or used for works authorized by the Local Government Act, 1933, and such deficiency shall be computed according to the rental at which such lands with any building thereon was valued or rented on November 17, 1933.

In the particular case put forward, it is clear that no payment is due under the section, as the land was not taken or used for any works authorized by the Local Government Act, 1933.

II. VARIATIONS ON THE TYPICAL CASE

1. *Urban areas.*

When the land is situated in an urban rating area the promoters are only liable to make good half the deficiency: Rating and Valuation Act, 1925, s. 2 (7).

2. *Land purchased by a county council under compulsory powers.*

County councils have (subject to authorization by the Minister) a general power of compulsory purchase for the purpose of their functions under any public general Act, under s. 159 (1) of the Local Government Act, 1933. In almost all cases the Acquisition of Land (Authorization Procedure) Act, 1946, applies, and part I of sch. 2 to that Act incorporates the Act of 1845 with certain changes.

Section 133 is excluded in certain cases which do not affect county councils, and may be excluded by the compulsory purchase order itself in all other cases.

The " special Act " means the enactment under which the purchase is authorized and the compulsory purchase order. The position as to works being authorized by the special Act is the same as for purchase by agreement. Neither the Local Government Act, 1933, nor the compulsory purchase order will normally authorize works. The " time of the passing of the special Act," however, would presumably be the date when the special Act was complete, that is to say, the time when the compulsory purchase order was confirmed.

3. *Works authorized by the special Act.*

In certain cases the Local Government Act itself authorizes works. For example, s. 125 authorizes the provision of offices by local authorities other than parish councils. In such a case the works would be works authorized by the special Act, and hence works for the purposes of s. 133. The question whether there is a deficiency would, of course, remain.

A similar position would arise if land were purchased, not under the general powers of the Local Government Act, 1933, but under some other Act which gave both the power to purchase land and to do works. An example is s. 19 of the Highway Act, 1835, which authorizes the purchase of land and its use as a highway store.

4. *Concurrent powers.*

The case of a highway store is also an example of a case where an authority may have more than one power to carry out a purchase. A county council as highway authority may purchase land for a highway store either under the Highway Act, 1835, or under their general powers under the Local Government Act, 1933. If the former power is used, the works are works for the purpose of s. 133; if the latter, they are not. What is the position if the county council purchase, as is frequently the case, without naming the statute under which they are proceeding?

This is really a question of fact, and in the absence of other evidence, quite slight indications one way or the other might be held to decide under which statute the council were acting. Where there are no such indications, perhaps a guess might be hazarded that the courts would prefer the statute which gave most protection to the individual.

5. *Purchase by local authorities other than county councils.*

Rating authorities incline, perhaps, to give themselves the benefit of the doubt when considering whether to charge themselves under a doubtful statute, so the problem of purchases by borough and district councils usually arises only when land is purchased in the area of another authority.

So far as purchase by agreement is concerned, borough and district councils are in the same position as county councils, since ss. 157 and 176 of the Local Government Act; 1933, apply to all local authorities. Where land is purchased under a compulsory purchase order, however, the position is different. Boroughs and districts have no general power of compulsory purchase, since s. 159 (2) gives them only a power to purchase compulsorily for the purposes of the Public Health Acts, 1875–1932, and this has by subsequent legislation been whittled down by the exclusion of powers now covered by such statutes as the Public Health Act, 1936, and the Food and Drugs Acts.

Powers of compulsory purchase are normally granted by the statute dealing with the particular service, *e.g.*, s. 306 of the Public Health Act, 1936, and s. 58 (1) of the National Assistance Act, 1948. In most cases the Acquisition of Land (Authorization Procedure) Act, 1946, will apply, either by virtue of s.1 of that Act, or by express application by the statute concerned, as is the case with the National Assistance Act, 1948.

Where the Acquisition of Land (Authorization Procedure) Act does apply, its provisions are the same as those applying to county councils, in that s. 133 can be excluded by the compulsory purchase order. In addition, it is automatically excluded in all acquisitions under parts II, III, and V of the Housing

Act, 1957 (sch. 2, para. 1 (2); sch. 3, para. 3 (6); sch. 7, para. 1 (2)). As in the case of county councils, the special Act is the Act authorizing the purchase and the compulsory purchase order, and the time of the passing of the special Act is the date of the confirmation of the order.

6. *Purchase by statutory undertakers and government departments.*

The powers under which statutory undertakers and the Crown purchase land are various, and the extent of the incorporation of the Act of 1845 differs widely. It is necessary in each case to examine the powers under which the land is being acquired, and the extent and nature of incorporation.

It is not possible in the space available to give a complete list of powers of acquisition, but the following notes may be of assistance in dealing with some of the commoner cases.

(*a*) *Railways.*

The British Transport Commission have general powers of purchase by agreement and by compulsory order under ss. 2 (2) (*c*) and 8 respectively of the Transport Act, 1947. In the former case there seems to be no formal incorporation of the Act of 1845, which therefore presumably applies in full by virtue of s. 1. In the latter case the Acquisition of Land (Authorization Procedure) Act, 1946, applies.

In many cases, however, special authority to acquire is given by private Act, and that Act must be looked at.

(*b*) *Gas and electricity.*

The position is the same as for railways, the relevant sections being ss. 1 (4) and 11 of the Gas Act, 1948, and ss. 2 (5) and 9 (1) of the Electricity Act, 1947.

(*c*) *Water.*

Section 24 of and sch. 2 to the Water Act, 1945, provide the powers of acquisition. Where land is acquired by agreement under s. 24 (1), the Lands Clauses Acts are applied by s. 24 (3). The Water Act is the special Act, and there is a special definition of land, which is similar to that in the Local Government Act, 1933.

Where land is acquired compulsorily under s. 24 (4), the Acts are incorporated by para. 1 (*a*) of sch. 2.

(*d*) *Armed forces.*

There are two main codes under which land may be acquired. If it is acquired under the Defence Acts, 1842–1935, the Acts are incorporated by s. 7 of the Lands Clauses Consolidation Acts Amendment Act, 1860; if under the Military Lands Acts, 1892–1903, they are incorporated by s. 2 of the Military Lands Act, 1892.

(*e*) *Government offices.*

It is understood that these are normally provided for all departments by the Ministry of Works under the powers of the Commissioners of Works Act, 1852, in which case the Acts are incorporated by s. 1 (1) of the Commissioners of Works Act, 1894. These powers appear to extend to purchase by agreement only.

(*f*) *Hospitals.*

The Minister of Health has power to acquire land compulsorily or by agreement under s. 58 (1) of the National Health Service Act, 1946. If by agreement, s. 58 (4) applies s. 176 of the Local Government Act, 1933; if compulsorily, s. 58 (3) applies the Acquisition of Land (Authorization Procedure) Act, 1946.

MISCELLANEOUS INFORMATION

NOTTINGHAMSHIRE RATE ESTIMATES AND ACCOUNTS

The total rate precept in the county of Nottingham for 1958–59 will be 13*s.* 4*d.*, an increase of 8*d.* compared with the previous financial year. Gross expenditure is estimated at £14,100,000 (nine *per cent.* up) and the net charge to the rates at £3,900,000 (17 *per cent.* up). The rate precept of 13*s.* 4*d.* will produce £3,600,000 and the difference of £300,000 will be taken from balances, leaving at March 31, 1959, an estimated balance of £500,000, equivalent to a rate of 1*s.* 10*d.*

County treasurer J. Whittle, B.Com., F.C.A., F.I.M.T.A., says in his foreward to the estimates "In considering the growing expenditure of the council over three years regard should be had not only to a marked expansion in most county services but also to the effect of inflation. The two official indices which give the most appropriate measure of inflation are the index of retail prices and the increase of weekly wage rates. These indices have moved as follows in recent years:

Retail Prices (June, 1947=100)
Dec. 1955=154, Dec. 1956=158, Dec. 1957=165
Weekly Wage Rates (June, 1947=100)
Dec. 1955=154, Dec. 1956=165, Dec. 1957=175

Like many another county Nottinghamshire received a large windfall on the final calculation of penny rate products for 1956–57. In estimating their rate products for that year district council treasurers were understandably cautious because of impending appeals and other uncertainties, and in a great many cases rates actually produced considerably more cash than had been thought probable. The bonus in Nottinghamshire amounted to £198,000.

For the first time for many years the amount of money required for capital works is estimated to be less than in the preceding year. Mr. Whittle refers to the capital restrictions imposed by the Government and says that the county council has been obliged to curtail severely its capital programme for 1958–59. Out of the estimated total of £2,500,000 the education service is expected to absorb 83 *per cent.*

Nottinghamshire, which pioneered the method, prints its accounts for 1956–57 with its 1958–59 budget. The accounts are prepared in the standard form recommended by the Institute of Municipal Treasurers and Accountants.

Loan debt at March 31, 1957, totalled £7,900,000, on which interest was paid at an average rate of 4·4 *per cent.* Mr. Whittle states that external temporary borrowings increased by £1,855,000 during the year, due to Government policy in refusing the facilities of the Public Works Loan Board to the larger authorities and because the county council have not yet been allowed to make an issue of stock.

The county council maintain renewal and repairs, insurance and capital funds.

Allowances to members of the council are estimated to amount to £6,450 in 1958–59, including a chairman's fund of £1,250.

BEDFORDSHIRE PROBATION REPORT

In his report for 1957, Mr. T. J. Rutter, principal probation officer for Bedfordshire, states that once again there has been an increase in the general turnover of the work of the probation service of the county during the year and an increase in the number of cases under supervision on December 31, with the exception of statutory after-care, where the total of 57 cases is the lowest for the past five years. The explanation suggested to account for a decrease in the number of after-care cases from approved schools is that Bedfordshire is part of the area covered by a Home Office welfare officer solely responsible for Home Office approved school (boys) after-care cases. There has, however, been a marked increase in respect of persons released on licence from borstal, of young prisoners, and corrective training and preventive detention cases.

Of probation cases completed during the year, 72 *per cent.* were satisfactory and in seven *per cent.* of cases a further probation order or a fit person order was made. There was a considerable increase in the total number of probation orders made in the higher courts. The percentage of supervision orders completed satisfactorily was 66. The case loads of the male officers continue to remain very high, and three of them have over 70 cases. The large areas which have to be covered by the officers responsible for rural areas, must also be borne in mind.

Mr. Rutter states that new problems are arising for probation officers in Bedfordshire. They are often placed in great difficulty when they are called upon to supervise, or perform some other duty for the court, in respect of persons of foreign nationality, namely, Italians, Poles, Yugoslavs, Hungarians, etc., who can speak little or no English, a large number of whom reside in Bedfordshire. They frequently have to enlist the aid of an interpreter who naturally expects some payment.

COUNTY BOROUGH OF BLACKBURN: CHIEF CONSTABLE'S REPORT FOR 1957

The authorized strength of this force, at 184, is nine higher than it was pre-war but is less than the chief constable considers necessary for the full performance of the duties expected of it on the basis of present authorized working conditions. He asked, therefore, for a further increase of three sergeants and 36 constables but the Home Office, whilst agreeing that such an increase will be necessary, replied that authority for it could not be given until the actual strength of the force (166 on December 31, 1957) more nearly approaches the present authorized establishment. Although one additional rest day per month has been allowed since October, 1956, payment has still to be made in respect of the second day. The force suffered a loss of four in strength during the year, there being only 11 new appointments to offset 15 losses. The chief constable looks to the cadets as a valuable source of new recruits. It is hoped that four who attain the age of 19 during 1958 will be absorbed into the force as regular constables. There is an ever-growing waiting list to keep the cadets up to establishment.

The vagaries of sickness can make a big difference to the effective strength of a police force at any particular time, and this force lost 1,827 days during 1957 compared with 1,122 in 1956. The increase was due partly to the bout of "Asian" 'flu and partly to long absences by about a dozen members of the force who were away for periods between 32 and 83 days. It is noted also, however, that the average number of days' absence from ordinary illnesses has considerably increased and some cases have been referred to the police surgeon for his opinion.

Both "crime" and non-indictable offences showed an increase on 1956. During 1957, 856 indictable offences were known to the police and 574 of these were detected. Four hundred and forty-nine persons were responsible for these as follows: 255 men, 22 women, 166 boys and six girls. The 172 juveniles were responsible for 168 (29·27 *per cent.*) of the detected crimes. The 1956 figures were 126 juveniles and 102 detected crimes.

The 1956 figure for non-indictable offenders was 818; that for 1957 increased to 971. In addition, during 1957, 191 persons were cautioned, 129 of them for Road Traffic Act offences. The number prosecuted for such offences was 349. There were 259 accidents in the borough resulting in death or personal injury, eight persons being killed and 297 injured. The police continued their very active interest in road safety measures, and made recommendations about safety measures at various points in the borough to the accident prevention committee.

There was the usual crop of insecure premises found in that condition by the police at night, a total of 1,059, including some 494 warehouses, factories, shops and offices. Such premises are, of course, an open invitation to thieves, but nothing seems to make owners take proper care.

PERSONALIA

APPOINTMENTS

Mr. P. S. Price, Q.C., has been appointed recorder of Kingston-upon-Hull, Yorks. Mr. Price was educated at Cheltenham and Exeter College, Oxford, and was called to the bar by the Inner Temple in 1936. During the last war he served as a Lieut. (S), R.N.V.R. In 1954, Mr. Price was appointed recorder of Pontefract and two years later he took silk. He has been recorder of York since 1955.

Mr. B. B. Gillis, Q.C., has been appointed recorder of Bradford, Yorks. Mr. Gillis was educated at Cambridge and was called to the bar by Lincoln's Inn in 1927. He has subsequently practised on the North Eastern Circuit and at the Central Criminal Court.

Mr. Francis John Watkin Williams, Q.C., has been appointed recorder of Chester. Mr. Williams will relinquish the recordership of Birkenhead, a post he has held since 1950. Aged 53, Mr. Williams was called to the bar in 1928 by the Middle Temple and took silk in 1952. He has been deputy chairman of Anglesey quarter sessions since 1949, deputy chairman of Cheshire quarter sessions since 1952 and deputy chairman of Flintshire quarter sessions since 1953. He served during the war in the R.A.F.V.R. with the rank of Wing-Commander.

Mr. J. H. E. Randolph has been appointed chairman of the East Riding of Yorkshire quarter sessions.

Mr. Samuel Baker Clarke, who has latterly been engaged in commercial accounting in Nottingham, has been appointed town clerk of Appleby, Westmorland, in succession to Mr. Thomas Longstaff, who has resigned the post after 12 years to go into private practice as an accountant in Appleby. Mr. Clarke will take over his new duties on May 1, next. Aged 43 years, Mr. Clarke has spent most of his working life in local government. He began in 1930 as a junior clerk in the town clerk's department at Crewe, becoming legal and committee clerk before he left for war service in 1940. He served during the war in the R.A.F. and on demobilization joined the Wilmslow, Cheshire, urban district council as assistant clerk of the council. In 1947 he became assistant clerk to West Bridgford, Notts., urban district council and held that post until 1949 when he moved to Kent as deputy clerk to Whitstable urban district council for three years. He was town clerk and chief financial officer to Romsey, Hants., borough council from 1952 to 1953 when he became clerk and chief financial officer to Sheppey, Kent, rural district council until 1955, since when he has been in commercial accounting.

Mr. Thomas Austin Towndrow has been appointed deputy town clerk of the royal borough of New Windsor, Berks. He is at present assistant solicitor with Maidenhead, Berks., borough council, where he has been since 1955 after previous service with Barnes borough council and Bexley borough council. With the latter he was legal assistant, being admitted in March, 1954.

Mr. Reginald Arthur Robert Gray has been appointed town clerk of Lewes, to succeed Mr. Norman Heaney, who took up his new appointment as clerk to Battle, Sussex, rural district council, on April 1, last. Mr. Gray was formerly deputy clerk and solicitor to Malvern, Worcs., urban district council. Mr. Gray, who is 37, was articled with the town clerk of Surbiton, Surrey, after the war, and took his degree of LL.B. at London University. He was admitted in February, 1954.

Mr. A. O. Hewitt has been appointed part-time clerk to the magistrates for the Ross petty sessional division of Herefordshire. Mr. Hewitt is 34 years of age and was admitted in October, 1948. He is a partner in the legal practice of Messrs. Orme, Dykes & Hewitt, Ledbury. He was articled with Mr. E. P. Thomas of Caernarvon and from 1946 to 1949 he was successively assistant and deputy clerk to the justices for the borough of Caernarvon. The vacancy arose through the sudden death on October 28, last, of Mr. J. K. Thorpe, who had held the appointment since January 1, 1946.

Mr. S. L. G. Beaufoy, C.B.E., F.R.I.B.A., P.P.T.P.I., has been appointed chief housing and planning inspector in the Ministry of Housing and Local Government in succession to Mr. F. Collin Brown, C.B.E., F.R.I.B.A., M.T.P.I., F.R.S.H., who is retiring on May 5, next. Mr. E. G. S. Elliott, O.B.E., M.A., M.T.P.I., will succeed Mr. Beaufoy as chief technical planner. Mr. J. R. James, O.B.E., B.A., F.R.G.S., becomes a deputy chief technical planner.

Superintendent Richard A. Baker has been appointed assistant chief constable and deputy chief constable of Berkshire. He took up his new duties at the end of last month when Mr. E. J. Braby retired. Mr. Baker joined the county police in 1934 at Reading, spending a year at headquarters before transfer to Maidenhead where he spent the next seven years. He returned to headquarters where he joined the traffic department, being promoted sergeant in 1942 and inspector four years later. In 1951, he was awarded the Royal Victorian Medal for Distinguished Service. In that year also he was promoted superintendent. He remained in charge of the traffic department until December, 1955, when he took charge of Newbury division on the retirement of Superintendent W. S. Brooks.

Mr. Bruce Dewar, assistant commandant of "F" Division of the Devonshire special constabulary, has succeeded Mr. John Gilley as commandant, as from March 4, last. Mr. Gilley has

resigned owing to ill-health. Mr. Dewar has served in the special constabulary for 23 years, having joined in February, 1935. He was appointed a sergeant in May, 1940, assistant area officer in 1953, and assistant divisional commandant in January, 1956.

Chief Inspector Frederick Ernest Francis, second-in-command of Newbury, Berks., police division, has been appointed chief of the Berkshire C.I.D. He will be promoted detective superintendent. He has also served at Maidenhead, Abingdon, Didcot, and Cumnor.

RETIREMENTS

Mr. Freeman Newton, O.B.E., chief constable of the Herefordshire county police force since February, 1929, retires on age grounds on June 30, next. He was chief constable of the city of Hereford force in 1927 and 1928, and then held the appointment jointly until the merger of the two forces as a result of the Police Act, 1946. The standing joint committee of Herefordshire county council have, with the approval of the Secretary of State, appointed Mr. Robert McCartney, at present assistant chief constable of Monmouthshire, as his successor, *see* our issue of March 29, last.

OBITUARY

Mr. T. B. Kenyon, clerk to the Bredbury and Romiley, Cheshire, urban district council from 1933 until his retirement in 1952, died on March 20, last, after a long illness. He was earlier clerk to Bolsover, Derbys., urban district council and had also served with Newton-le-Willows, Lancs., urban district council.

Mr. Frank Risden, clerk of Watchet, Somt., urban district council for 25 years and of Williton, Somt., rural district council for 20 years, has died. For 27 years he was clerk to the magistrates of Williton and Dunster benches. He retired in 1938 and was made a justice of the peace on the Williton bench. He is survived by his son, who succeeded him in the Watchet and Williton clerkships.

Mr. Norman Lambert, clerk to Gateshead county borough magistrates, has died at the age of 68.

Mr. Arthur P. Moffatt, clerk to Wigton and Silloth, Cumb., magistrates' courts and managing clerk to Messrs. J. E. Beaty & Co., solicitors, Wigton, has died at the age of 58. He joined the firm when it was Messrs. Rigg and Strong, and before becoming clerk to the magistrates in 1942, was assistant for some years.

NEW STATUTORY INSTRUMENTS

1. **CUSTOMS AND EXCISE.** The Import Duties (Drawback) (No. 7) Order, 1958.

This order increases from 7s. 3d. to 7s. 9d. per cubic foot the rate of drawback allowable in respect of Customs duty paid on veneers used in the manufacture of certain exported sewing-machine woodwork. The order also amends the quantities of square-sawn wood and timber and of veneers which are to be taken into account in calculating the drawback payable on such woodwork.

Came into operation March 18, 1958. No. 390, 1958.

2. **CUSTOMS AND EXCISE.** The Import Duties (Drawback) (No. 6) Order, 1958.

This order reduces the rates of drawback allowable in respect of Customs duty paid on linseed oil used in the manufacture of certain kinds of exported goods. For exported paints, printers' inks, floor coverings, fishing nets, certain blocks and tiles, etc., drawback is reduced from £14 10s. to £12 10s. per ton of linseed oil; and for exported linseed oil fatty acids it is reduced from £13 6s. 6d. to £11 10s. per ton of linseed oil.

The order also revises the quantities of linseed oil to be taken into account in calculating the drawback allowable on exports of linoleum, cork carpets, felt base, oil baize, leathercloth and certain blocks and tiles.

Came into operation March 18, 1958. No. 389, 1958.

3. **WAGES COUNCILS.** The Wages Regulations (Ready-made and Wholesale Bespoke Tailoring) Order, 1958.

This order, which has effect from March 24, 1958, sets out the statutory minimum remuneration payable in substitution for that fixed by the Ready-made and Wholesale Bespoke Tailoring Wages Council (Great Britain) Wages Regulation Order, 1953 (Order R.M. (58)), as amended by the Wages Regulation (Ready-made and Wholesale Bespoke Tailoring) (Amendment) Order, 1956 (Order R.M. (64)), which Orders are revoked.

New provisions are printed in italics.

Came into operation March 24, 1958. No. 371, 1958.

4. **FIRE SERVICES.** The Firemen's Pension Scheme Order, 1958.

This order amends the Firemen's Pension Scheme, 1956, set out in the Appendix to the Firemen's Pension Scheme Order, 1956.

Article 1 of the present order extends the period for which a child's allowance granted on or after March 14, 1958, is payable, where the child is receiving full-time education or is an apprentice, up to the time the child attains the age of 18 years.

Article 23 of the Scheme provides that a fireman entitled to retire with an ordinary pension may, while serving, surrender part of his eventual pension in favour of a dependant. A chief officer's or, in Scotland, a firemaster's entitlement to an ordinary pension is conditional, where he retires under the age of 55 years, on the fire authority agreeing to his notice of retirement. Article 2 of the present order provides that for the purposes of art. 23 of the Scheme this limitation on entitlement to retire with an ordinary pension shall be ignored.

Article 3 provides that in calculating a transfer value no account shall be taken of any retrospective increase in pay granted after the fireman leaves the brigade from which he transfers.

Came into operation March 14, 1958. No. 370, 1958.

5. **INCOME TAX.** Double Taxation Relief (Taxes on Income) (Swedish Dividends) Regulations, 1958.

Under the double taxation convention between the United Kingdom and Sweden, residents of the United Kingdom who are subject to tax in the United Kingdom on dividends paid by a Swedish company are subject to Swedish coupon tax at the reduced rate of five per cent. and not at the rate generally in force, which at the date the convention came into effect was 20 per cent.

The Double Taxation Relief (Taxes on Income) (Swedish Dividends) Regulations, 1950, (S.I. 1950/1443), which these regulations supersede, provided that, where Swedish tax had been deducted at the record rate of five per cent. and United Kingdom tax had also been deducted but repayment of the United Kingdom tax was subsequently claimed on the ground that the person entitled to the income was not resident in the United Kingdom, the Commissioners were to withhold from the repayment found to be due and pay over to the Swedish tax authorities an amount equal from 20 per cent. to 30 per cent. These regulations are therefore necessary to the further 15 per cent. due in respect of Swedish tax.

As from January 1, 1957, the rate of Swedish coupon tax was increased from 20 per cent. to 30 per cent. These regulations are therefore necessary to give the Commissioners authority, in the cases mentioned in the preceding paragraph, to withhold from the repayment found to be due and pay over to the Swedish authorities an amount equal to the further 25 per cent. now due in respect of Swedish tax. The regulations have been so drafted that if the rate of Swedish coupon tax should be changed in the future new regulations will not be required.

Came into operation March 12, 1958. No. 365, 1958.

6. **INDUSTRIAL AND PROVIDENT SOCIETIES.** The Industrial and Provident Societies (Amendment of Fees) Regulations, 1958.

These regulations amend as from April 1, 1958, fees payable by societies registered under the Industrial and Provident Societies Acts, 1893 to 1954.

Came into operation April 1, 1958. No. 364, 1958.

7. **CUSTOMS AND EXCISE.** The Import Duties (Drawback) (No. 5) Order, 1958.

The Import Duties (Drawback) (No. 5) Order, 1953, as amended, provides for the payment of drawback of Customs duty on certain imported paper used in the manufacture of toilet paper, in rolls or packets, exported in the period ending on March 14, 1958. This order continues the drawback indefinitely.

Came into operation March 15, 1958. No. 363, 1958.

8. **CUSTOMS AND EXCISE.** The Additional Import Duties (No. 1) Order, 1958.

This order reduces the rate of duty chargeable on dandelion root under the Import Duties Act, 1932, from 1s. 3d. per lb. to 10 per cent. ad valorem.

Came into operation March 13, 1958. No. 362, 1958.

9. **PENSIONS.** The Superannuation (Fire Brigade and Other Local Government Service) Interchange (Amendment) Rules, 1958.

These rules amend the Superannuation (Fire Brigade and other Local Government Service) Interchange Rules, 1952, which make provision with respect to the pension rights of persons who leave pensionable employment under a local authority and enter employment in which they are pensionable under the Firemen's Pension Scheme. The amendments are, in the main, consequential on changes in local government superannuation law and include provisions with respect to the payment of transfer values and the exercise by local authorities of certain discretionary powers. Rule 6 gives the rules a limited retrospective operation under the authority of and subject to the safeguards provided by s. 2 (5) of the Superannuation (Miscellaneous Provisions) Act, 1948.

Came into operation March 17, 1958. No. 361, 1958.

10. **TRANSPORT CHARGES.** Independent Undertakings. The Independent Undertakings (Railway Merchandise Charges Scheme Application) Order, 1958.

This order authorizes all independent statutory railway undertakings, other than those whose railways are situated wholly within a dock, to levy for the carriage of merchandise charges within the maximum charges prescribed by the British Transport Commission (Railway Merchandise) Charges Scheme, 1957, or, where no maximum charges are specified, to levy reasonable charges in accordance with the provisions of the Scheme.

Came into operation April 5, 1958. No. 347, 1958.

11. **WAGES COUNCILS.** The Wages Regulation (Toy Manufacturing) (Holidays) Order, 1958.

This order, which has effect from March 24, 1958, sets out the holidays which an employer is required to allow to workers and the remuneration payable for those holidays in substitution for the holidays and holiday remuneration fixed by the Toy Manufacturing Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1952 (Order Y. (47)), which is revoked.

New provisions are continued in Column 3 of sub-para. (1) of para. 7 and are printed in italics.

Came into operation March 24, 1958. No. 343, 1958.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

From Sir David Scott Cairns, Q.C., and others.

DEAR SIR,

We should greatly appreciate your co-operation in bringing the objects and activities of this Society to the notice of your readers.

Justice first came into existence as the result of joint efforts of the legal societies of the three political parties to secure fair trials in Hungary and South Africa. A permanent Council was later formed with equal representation of the three parties and from all branches of the legal profession, and the Society became affiliated to the International Commission of Jurists.

In the words of its statute, the International Commission "is dedicated to the support and advancement of those principles of justice which constitute the basis of the Rule of Law. It will foster understanding and respect for the Rule of Law and give aid and encouragement to those people to whom it is denied."

Since its provisional formation, Justice has co-operated with the International Commission in its efforts to focus world opinion on abuses of justice and denials of fundamental liberties in various parts of the world. The Commission is at present engaged in a far-reaching project of an exhaustive Rule of Law Questionnaire being studied and completed in nearly 30 countries, to be followed by a World Conference at New Delhi in 1959.

In its own right, Justice has dealt with a number of problems arising from the administration of justice in our colonial territories and is undertaking research in this field. It is also concerned with some aspects of the administration of the law in this country and is undertaking research on such questions as the law of contempt, state privilege, abuses of power by administrative bodies, and existing scales of legal penalties.

The objects of Justice are not among those normally supported by commercial firms and charitable trusts, and they do not command much publicity or emotional appeal. It has become plain that we must rely mainly on members of the legal profession and on those who are concerned in some way with the administration of justice. We venture to suggest that magistrates should have a particular interest in the work we are trying to do, because they play such a vital part in the processes of justice and will be concerned to maintain standards both at home and abroad.

We urgently need funds to carry on our work. The subscription for lawyers is £1, but lay magistrates and others may become associate members on payment of 10*s.* and will receive all the publications of the International Commission. Membership applications and subscriptions should be sent to the secretary, who will be pleased to supply any further information.

Yours faithfully,

(Signed) DAVID CAIRNS,
WILLIAM CHARLES CROCKER,
JOHN FOSTER,
EDWIN HERBERT,
NATHAN,
HARTLEY SHAWCROSS (Chairman).

Justice,
1 Mitre Court Buildings,
Temple, E.C.4.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

Is there not a misrepresentation underlying the answer given to P.P. 6, at p. 193, *ante* ?

Paragraph 4 (2) of sch. 1 to the Rent Act, 1957, speaks of a local authority's being satisfied that the dwelling or any part thereof is in disrepair (and dwelling by virtue of s. 25 means the aggregate of the premises comprised in the tenancy) and that the defect ought reasonably to be remedied having due regard to the age, character, and locality of the dwelling. It therefore does not seem relevant whether "any ordinary person would say that the premises were out of repair." Such a person should address his attention to whether or not the gate or the window is out of repair. If it is so, this is sufficient ground for the issue of a certificate of disrepair, provided only that the defect is one which ought reasonably to be remedied. If, as you suggest, it is a trifling matter for the landlord, there would appear to be nothing unreasonable in requiring these particular defects to be put right.

The case put to you does not then seem to be any justification for a suggestion that local authorities may be taking advantage of the reluctance of landlords to embark upon litigation.

Yours faithfully,
J. W. ELVEN.

10 Bracey Avenue,
Norwich.
March 25, 1958.

[We greatly doubt whether a garden gate or window latch is "part of" the dwelling, in the sense of the words quoted. We think those words must have been inserted in order to negative any suggestion that the house was not in disrepair when (say) one room was out of repair.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

SIR,

In your Notes of the Week for February 15, 1958, you say that people caught exceeding 30 m.p.h. in places where that speed is not dangerous "have no just cause for complaint if they are caught and fined."

Surely, sir, the citizen has cause for complaint if he is subjected to unnecessary restrictions and punished for disobeying them. I would not say that one is entitled to assume that the law is automatically just because it is the law. It is the essence of democracy that laws should be just and reasonable, and the speed limit is in many cases most unreasonable.

In regard to your argument about the curves, in theory you are perfectly right, but in practice it is impossible for the human being always to know what is exactly the right speed regulated to suit the road conditions. Surely the most important thing is to stop accidents and not merely to punish the motorist.

Yours faithfully,
J. J. LEEMING,
County Surveyor.

County Hall,
Dorchester,
Dorset.

[Our correspondent's argument about the speed limit seems to suggest that the individual citizen is entitled to judge for himself whether a particular law is just and reasonable and that if he thinks it is not he should not be punished for disobeying it. If a sufficient number of people think that a law is unjust and unreasonable there is a chance, through Parliament, to get that law amended, but we think that the individual must accept the law as decided by Parliament and must be prepared to take the consequences if he is found to have disobeyed it. Whether speed limits should be imposed or not is a question on which opinions differ, but surely if it is decided that a limit should be imposed steps should be taken to ensure that it is obeyed. Courts cannot decide cases according to the views of individual defendants as to whether a particular law is just and reasonable.

We appreciate our correspondent's point about the difficulty of judging what is a safe speed on curves, and we are certainly not opposed to road improvements which make for greater safety. —*Ed., J.P. and L.G.R.*]

CIRCUITS OF THE JUDGES

NOTICE—Civil, Criminal and Divorce Business will be taken at all the Towns mentioned.

SPRING ASSIZES, 1958	N. EASTERN	NORTHERN
Commission Days	*Davies, J.* *Salmon, J.* *Elwes, J.*	*Barnard, J.* *Paull, J.* *Edmund Davies, J.*
Monday, April 14	LEEDS	
Monday, April 21		MANCHESTER

THE WEEK IN PARLIAMENT

From our Lobby Correspondent

MAGISTRATES' COURTS FINES

At question time in the Commons, Mr. C. Osborne (Louth) asked the Secretary of State for the Home Department, since magistrates' courts were reluctant to impose maximum fines, if he would introduce legislation to treble all maximum fines because of the depreciation of money, and so encourage more realistic monetary punishments to be inflicted.

The Secretary of State for the Home Department, Mr. R. A. Butler, replied that it would not be appropriate to treble all existing fines with reference to the nature of the offence and the date when the fine was last fixed. He was, however, reviewing existing small statutory fines, and careful consideration was given to the levels of fines in new legislation.

Mr. Osborne then asked whether Mr. Butler would bear in mind the undesirability of sending men to prison for short sentences and the greater desirability of imposing a fine as punishment. In view of the depreciation of money, ought not the amount to be increased according to the fall in currency?

Mr. Butler replied that one had to pay some attention to the nature of the offence and the date of the legislation which covered the fine. Of course, they would review all those matters. He could, however, give no general undertaking.

POWERS OF DISQUALIFICATION

Mr. Marcus Lipton (Brixton) asked the Minister of Transport whether, by amending the Road Traffic Act, 1956, he would restore the power of magistrates to disqualify drivers who did not stop after an accident.

The Minister of Transport, Mr. Harold Watkinson, replied that he thought the penalties for failing to report an accident were adequate. That was why that offence was not included in the list, set out in the Road Traffic Act, 1956, of offences for which a court might order disqualification. He would, however, review the matter when the next suitable opportunity offered. During 1955 and 1956 the numbers of convictions for that offence were 6,360 and 6,849 respectively; figures for 1957 were not available.

Mr. Lipton asked whether the Minister was aware that a hit-and-run driver could not be banned and could not even have his licence endorsed and that all that could be done was to impose a maximum fine of £20. The figures to which the Minister had referred showed that it was a serious gap in the 1956 Act which should be stopped up at the earliest possible moment.

There was no reply.

CRIMINAL JUSTICE ACT, 1948

Mr. P. Rawlinson (Epsom) asked the Secretary of State for the Home Department if he was aware of the difficulties experienced by courts in sentencing persons under s. 460 (5) of the Criminal Justice Act, 1948, since they were often ignorant of what considerations, if any, had been given to the circumstances of the original offence by the court which had imposed sentence for the further offence; and if he would consider the amendment of the law so as to provide that the court which sentenced the offender for the original offence should also sentence the offender for the offence which had been committed during the probation period.

Mr. Butler replied that he assumed Mr. Rawlinson was referring to s. 8 (5) of the Criminal Justice Act. He agreed that there was advantage in an offender who was already subject to a probation order or order of conditional discharge being dealt with, wherever possible, by one court, both for the further offence and for the original offence. Mr. Rawlinson's proposal was not, however, practicable because in some cases it would involve persons convicted before superior courts being sent for sentence to magistrates' courts with limited sentencing powers, and that would be unacceptable for a number of reasons. Subsections (6) and (7) of s. 8, which enabled the court dealing with the fresh offence to deal also with an earlier offence in respect of which a court of summary jurisdiction had made a probation order or an order of conditional discharge, went as far as it was possible to go to achieve what Mr. Rawlinson appeared to have in mind.

PREVENTIVE DETENTION

Mr. Butler told Mr. V. Collins (Shoreditch and Finsbury) that in 1949 there was a daily average of 130 prisoners serving a sentence of preventive detention. The provisional average for 1957 was 1,311. In 1949 the average cost for prisoners of all classes was £181 18*s.* 7*d.* The provisional average cost for 1957 was £341 19*s.* 11*d.*

MAINTENANCE ORDERS BILL

When the Maintenance Orders Bill was considered on Report, the Under-Secretary of State for the Home Department, Mr. David Renton, moved an Amendment to cl. 16 (Special Provisions as to Magistrates' Courts).

He said that s. 52 (3) of the Magistrates' Courts Act, 1952, required the clerk of a magistrates' court to whom payments were made under a maintenance order to proceed in his own name for the recovery of the arrears if the wife asked him to do so and if he did not think that it was unreasonable to do so. It was desirable for the purposes of the Bill, which aimed at reciprocality of enforcement procedures, that that requirement should apply equally to High Court and county court orders registered in a magistrates' court under part I of the Bill. As s. 52 was at the moment drafted in terms of orders for weekly payments, it could frequently not apply to High Court maintenance orders, which were generally for monthly payments. Therefore, the Amendment sought to remove the limitation in s. 52 of the 1952 Act to orders for weekly payments, and to make it explicit that the subsection in that section applied to the orders of any court which were payable through the clerk of a magistrates' court. Therefore, it dovetailed that existing procedure with the procedure that they were contemplating under the Bill.

The Amendment was approved, and the Bill was later read a Third time. It now awaits consideration in the House of Lords.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, April 1

TRIBUNALS AND INQUIRIES BILL—read 2a.

Wednesday, April 2

ROAD TRANSPORT LIGHTING (AMENDMENT) BILL—read 2a.

HOUSE OF COMMONS

Monday, March 31

DISABLED PERSONS (EMPLOYMENT) BILL—read 2a.

Wednesday, April 2

HOUSE OF COMMONS (REDISTRIBUTION OF SEATS) BILL—read 3a.

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

Institute of Municipal Treasurers and Accountants. Membership and Constitution, 1958. No price stated.

Hastings Annual Report of the Chief Constable, 1957.

Newcastle upon Tyne Probation Report, 1957.

Northumberland County Council, Annual Estimates and Abstract of Accounts, 1957.

South African Criminal Law and Procedure. Vol. II. Gardiner and Lansdown. Sixth edition. Juta and Co., Ltd., Cape Town and Johannesburg.

Plymouth Chief Constable's Annual Report, 1957.

Beacontree Magistrates' Court Annual Report.

Salop Probation Annual Report.

Dudley Chief Constable's Annual Report, 1957.

Walsall Chief Constable's Annual Report, 1957.

Dewsbury Chief Constable's Annual Report, 1957.

South African Law Journal, February, 1958.

Texas Law Review, No. 3, vol. 36, 1958.

Knight's Loose-leaf Public Health Regulations. Edited and annotated by The Hon. Gerald Ponsonby, M.A., of the Middle Temple, Barrister-at-Law. Price 42*s.* net (for part I). Charles Knight & Co., Ltd.

Wakefield Chief Constable's Annual Report, 1957.

Statistics of Local Authorities. Crematorium Undertakings. Institute of Municipal Treasurers and Accountants (Incorporated).

ERRATUM

Water Sources. In answering P.P. 11 at p. 163, *ante*, the Rivers (Prevention of Pollution) Act, 1951, should have been mentioned, instead of the Rivers Pollution Prevention Act, 1876, which was repealed by the Act of 1951.

[A.L.P. will resume his weekly article next week.]

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*Mental Deficiency Act*, 1913—*Order under s. 8 after conviction.*

An accused person is charged with an indecent assault on a child. He consents to summary trial and pleads guilty to the charge. There is no suggestion or appearance of mental disturbance and the bench, pursuant to s. 14 (3) of the Magistrates' Courts Act, 1952, record a conviction and adjourn the hearing for inquiries to be made by a probation officer as to the home surroundings of the accused. During the adjournment the parents of the accused seek medical advice and the probation officer is now aware that the accused is considered to be a mental defective. In view of the fact that a conviction has been recorded, can the court now proceed under the proviso to s. 8 (1) of the 1913 Act which only appears to give the court power to act under the section when it does not record a conviction. If, in these circumstances, the court has now no power to make a direction or order under s. 8 (1) (*a*) or (*b*) respectively, how do you advise the court should proceed ? M. SILVER.

Answer.

The proviso to s. 8 allows a magistrates' court to act under the section without proceeding to conviction but it leaves such a court free to act under the general power given at the beginning of the section "on the conviction by a court of competent jurisdiction of any person of any criminal offence." The court can make an order under s. 8 in the circumstances set out in the question provided that the necessary medical evidence is given.

2.—Housing Act, 1957, s. 16—*House disused as dwelling but not altered.*

In a village in this rural district there are three small cottages forming part of a terrace which have been represented by the medical officer of health as being "unfit." The council have decided to deal with these cottages individually and notices of time and place have been served. It is now learnt that the middle cottage, although identical with the cottages which are still occupied on each side, has not itself been occupied as a dwelling for more than 20 years, but has been used continuously as a cobbler's lock-up shop. The question arises whether this middle cottage can properly be regarded as being "any house" as mentioned in s. 16 (1) of the Housing Act, 1957. It is noted that this section does not repeat the earlier reference contained in s. 11 of the Act of 1936 "that any house which is occupied, or is of a type suitable for occupation" . . .

The cottage has not been structurally adapted for use as a cobbler's shop, and there appears to be no doubt that being constructed identically with the adjoining cottages it could be re-occupied as a dwelling in the future. On the other hand its present use is that of a shop not that of a dwelling-house.

I shall be glad to have your opinion as to whether the middle cottage can be properly dealt with as an individually unfit house. If so, the council are proposing to make a closing order on the property, and permit its continued use as a cobbler's shop by the present user. PONUR.

Answer.

The words quoted in the query from s. 11 of the Act of 1936 were repealed by s. 1 of the Housing Act, 1949. But this was consequential upon removal of the following words "by the working classes," and we do not think the fundamental meaning of the word "house" is altered by the repeal. Paragraph 2 in sch. 5 to the Housing Act, 1957, recognizes that a house (or a building constructed for use as a dwelling, which is a narrower class, unless it is the same thing) may be used for other purposes. Although this paragraph is not directly relevant, it seems to support the conclusion that a house does not cease to be a house by reason, only, of its being used otherwise. In the present case we are told that the middle cottage has not been altered structurally, and in our opinion it can be dealt with in the same way as the others. As the query points out, the council can then use s. 16 (4), which will regularize the present position and safeguard the future.

3.—Husband and Wife—*Maintenance order—Effect of decree of nullity.*

On March 14, 1956, AB, a wife, obtained an order in the court for payment of £2 a week by her husband, CD, on the grounds of his desertion. That order is still in force.

On July 15, 1957, CD obtained a decree *nisi* absolute nullity on the grounds of wilful non-consummation of the marriage on the part of AB. In point of fact the petition was not defended owing to the behaviour of CD and the fact that AB was content that the marriage should be annulled.

CD has now issued a summons in the court for the revocation of the maintenance order on the grounds that the marriage has been annulled.

On February 22, 1957, CD entered into a deed of covenant with AB whereby it was recited that it had been agreed between the parties that the court should be asked to substitute the sum of £1 for the original amount of £2 in the order and in consideration of AB entering into certain covenants he covenanted not to apply for a reduction or revocation or other variation of the said order unless (1) AB should re-marry or (2) CD should be continually unemployed for a period of at least one month; AB entering into covenants that she would not apply for an increase in the said order except if she be certified by a duly qualified doctor as being unfit for work for a period of at least one month, in which case the increase should only remain in force during so long as the wife was certified as being so unfit.

CD contends that having regard to the fact that the marriage has been annulled and not merely dissolved, the deed of covenant is of no value and should be disregarded. It might be said that the deed of covenant was entered into at the time when proceedings in the court for the nullity were actually in process or were known by AB to be pending.

I would be grateful for your opinion of whether the magistrates would be in order to grant a revocation of the original order, having regard to the deed of covenant referred to. Y. COPAN.

Answer.

The High Court has power to make orders for maintenance in nullity cases just as in divorce cases (ss. 19 and 26, Matrimonial Causes Act, 1950). We think, therefore, that a decree of nullity does not of itself put an end to a magistrates' court's order any more than a decree of divorce does, but that the principles laid down in *Bragg* v. *Bragg* [1925] P. 20, and *Plunkett* v. *Plunkett* [1937] P. 208; 3 All E.R. 736, apply.

We are reinforced in that opinion by *Adams* v. *Adams* [1941] 1 All E.R. 334; 1 K.B. 536, in which it was held that a decree absolute, annulling on the ground of incapacity a voidable marriage, does not render void a separation agreement containing a maintenance clause.

In our opinion this matter is one for the discretion of the magistrates. The deed of covenant is of evidential value and should be considered by the court.

4.—Landlord and Tenant—*Agricultural holding—Breach of covenant remedied after expiry of notice to remedy.*

The Agricultural Holdings Act, 1948, s. 24 (1) requires the Minister's consent to a notice to quit. Subsection (2) provides that the previous subsection shall not apply in certain cases there set out, one of which, (*d*), is where "at the date of the giving of the notice to quit the tenant had failed to comply with a notice in writing served on him by the landlord requiring him . . . within a reasonable time or within such reasonable period as was specified in the notice any breach by the tenant that was capable of being remedied or any term or condition of his tenancy etc."

By a notice dated June 25, 1956, the landlord called upon the tenant to remedy certain breaches of his repairing covenant within a period of seven months from the date of service of that notice upon the tenant. The notice was served within a day or so of this date. On March 6, 1957, the landlord inspected the holding and found that certain of the breaches had not been made good. On April 17, 1957, the landlord served notice to quit upon the tenant, in pursuance of para. (*d*) of s. 24 (2) of the Act.

The dispute then went to arbitration, at which the landlord admitted that he had not visited the farm between March 6 and April 17, and conceded that on the latter date all the breaches had been made good. The tenant submits that the notice to quit is bad as at the date of it he had, in fact, complied with the notice. The landlord submits that the notice is good as at the date

of it the tenant had failed to remedy the breach within the time specified in the notice. Which submission is correct, and can you cite any authority or text book in support of your answers? *Scammel's Law of Agricultural Holdings* (2nd edn. at p. 219) appears to favour the tenant's submission.

ANSON.

Answer.

We prefer the tenant's contention. Granting that the landlord had specified a reasonable period, and that the tenant had failed to comply when that period ended, his failure was a thing of the past when the crucial date was reached. We admit that, as a matter of interpretation, it can be argued that the condition precedent was satisfied when the reasonable period ended, and that nothing the tenant does afterwards can cure the failure. But the crucial period (whether for paying rent or for remedying a breach) must in any event have ended before the notice could be served terminating the tenancy—this is implicit in the possibility of such a notice. There must, therefore, be some purpose in setting out the point of time in the opening words of para. (*d*), which purpose can only be to fix this as the point at which failure must exist as a fact. We do not find any judicial authority (the section was new law in 1947), but the object of the section as a whole is to protect tenants, and we should expect the High Court to determine the ambiguity of drafting accordingly.

5.—Licensing—*New on-licence—Restricted by conditions to evenings when functions held—Whether monopoly value payable.*

There is in this licensing district a dance hall which has two ballrooms and a restaurant. The ballrooms are used for dances such as masonic dances, etc., and the restaurant is used by the general public for lunch, and in the evenings is used for public and private function dinners.

This dance hall, through a licensee, applies for and obtains many occasional licences. The management of this hall proposes to apply at the next annual licensing sessions for a justices' licence, the idea being that, if it is granted, it should be restricted as follows.

The sales of liquor to be restricted to evenings upon which dances or dinners are held, and restricted to persons attending those functions. Intoxicating liquor not to be sold in the restaurant when it is being used by the general public for lunches.

Can a justices' licence containing these conditions be granted, and if so would monopoly value be payable?

O. LEX.

Answer.

There is no reason why an on-licence should not be granted subject to the restrictive conditions outlined by our correspondent. Except in the case that the on-licence is granted for the sale of wine alone or sweets alone, monopoly value will be payable (Licensing Act, 1953, s. 6 (1) (2) (10).)

6.—Magistrates' Courts—*Appeal to quarter sessions—Quarter sessions substitute a fine for imprisonment and impose, in default of payment, imprisonment in excess of that allowed by s. 64 and sch. 3 to the Magistrates' Courts Act, 1952—Enforcement.*

A appears before a magistrates' court charged with larceny. He elects to be dealt with summarily, and pleads not guilty but is convicted and sentenced to three months' imprisonment.

On his appeal to quarter sessions against conviction and sentence quarter sessions uphold the conviction but vary the sentence to a fine of £10, and order that in default of payment at £1 per week A be imprisoned for *three months*. The imprisonment is in excess of the usual scales. Two months after his appearance at quarter sessions A has paid nothing (nor has he applied for further time to pay). How should payment of the fine imposed by quarter sessions be enforced?

M.Q.S.Q.

Answer.

We think that the magistrates' court cannot issue a warrant committing the defendant to prison for three months in default of payment, and that this is a case in which the decision should be left to quarter sessions to enforce as contemplated by s. 86 of the Magistrates' Courts Act, 1952, which provides that the power to enforce of the magistrates' court is "without prejudice to the powers of the court of quarter sessions to enforce the decision." We know of no authority for the imposition of this alternative.

7.—Town and Country Planning—*Refusal of planning permission—Sewerage.*

A has two building estates which he proposes to develop for housing, and seeks planning permission. The planning authority whilst otherwise satisfied, is in one case reluctant to give planning permission in that the new foul water sewer which will serve the new estate will connect with an existing public foul sewer which is stated to be loaded to capacity. In the other case planning permission has already been obtained in principle, but the only sewer to which connexion can be made is a combined foul and storm water public sewer of some antiquity, stated to be already fully loaded.

In each case is this a sufficient reason for withholding planning permission, in that s. 34 of the Public Health Act, 1936, entitles the connexion of properly constructed new drains or sewers with existing sewers as of right? If plans of new houses are submitted, can they be refused under s. 37 of the Public Health Act, 1936, on the ground that the drainage will not be satisfactory, if the new sewers and drains are themselves satisfactory but can only be connected to an existing public sewer of insufficient dimension?

POFFO.

Answer.

The plans of a proposed house cannot be rejected under s. 37 of the Public Health Act, 1936, upon the ground that there will not be an adequate outlet for the private sewer into which the house will drain: *Chesterton R.D.C.* v. *Ralph Thompson, Ltd.* [1947] 1 All E.R. 273; 111 J.P. 127. Nor in our opinion can the plans be rejected under that section, or otherwise under the Public Health Acts, on the ground that exercise by the owner of the house of the statutory right given to him by s. 34 of the Act of 1936 will overload the council's sewer. We have, however, expressed the view at 116 J.P.N. 446, and again at 122 J.P.N. 64, that it is not *ultra vires* the planning authority to refuse planning permission on such a ground. Whether this is reasonable must be decided in each case. The Minister of Housing and Local Government has acted upon our view of *vires*, dismissing some appeals and allowing others on the facts, in a group of decisions published in his bulletin of selected appeal decisions (No. 12), issued in January, 1957.

8.—Water Act, 1945, s. 37 (1)—*Estate development—Bringing water supply on to estate—Mains virtually to boundary—Obligation of developers to pay part of cost.*

We are acting for a company of estate developers. They have demanded a water supply for one of their estates. There are existing mains virtually to the boundaries of the estate at two places. The local authority are the water undertakers and operate under the Public Health Act, 1936. They have stated that they will require our clients to pay 12/8ths of the total cost of laying the mains on and across the site. This includes some work which in our clients' opinion is not a cost of providing and constructing necessary service reservoirs and necessary mains as defined in s. 37, Water Act, 1945. In addition to that point however our clients maintain that the obligation of the undertakers is merely to construct necessary service reservoirs and lay necessary mains to the boundaries of the site, after which they can themselves undertake the work.

We shall be glad of your opinion whether on the wording of s. 37 (1), Water Act, 1945, the undertakers can insist on bringing the mains on to the estate and within 100 *ft.* of the curtilage of each dwelling, or whether all that the Act requires them to do is to lay the mains to the boundaries.

If, in your opinion, the obligation is only to lay mains to the boundaries of the estate, then presumably the cost of "necessary" reservoirs and mains which the developer may be required to pay under the proviso to that subsection is limited to the construction of reservoirs and laying of mains outside the boundaries of the estate; do you agree?

PERODA.

Answer.

Under s. 37 of the Water Act, 1945, as enacted the obligation of the undertakers was merely to bring the water supply up to the boundaries of the land. The section was amended by the Water Act, 1948, s. 14 (4) (repealed); as now amended by s. 46 of the Housing Act, 1949, it gives power to the owner to require the construction of reservoirs and mains to such points as will enable the buildings to be connected thereto at a reasonable cost. We gather that your clients have not in terms asked to have the mains brought to any specified points, and would have preferred to do work within their own land for themselves. The undertakers seem to be claiming that they may treat each building separately. We think the owner's view is the better, but there seems to be no authority upon it, and a decision would have to be obtained under subs. (3) which also was added by the Act of 1949.

lanning
erve the
r which
lanning
he only
oul and
already

lanning
entitles
ers with
re sub-
lth Act,
factory,
but can
ufficient

POFFO.

er s. 37
ere will
ich the
n, Ltd.
on can
der the
owner
of the
e, how-
at 122
o refuse
reason-
ing and
missing
oup of
ecisions

ringing
ndary—

y have
ere are
at two
operate
at they
laying
which
ructing
ned in
er our
merely
mains
nselves

ling of
ringing
lage of
to do

to the
ssary"
to pay
ruction
of the

ERODA.

igation
up to
by the
ed by
ner to
ints as
onable
ked to
l have
. The
uilding
there
l have
he Act